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In the Supreme Court of the United States

OCTOBER TERM, 1955.

No. 192.

NOVAK N. MARKU,
Petitioner,

vs.

THE UNION & LEAGUE OF ROMANIAN SOCIETIES OF AMERICA, INC., et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States.

The petitioner, Novak N. Marku, respectfully petitions this Honorable Court for a writ of certiorari to review an order and judgment of the Supreme Court of Ohio, rendered in this cause on January 19, 1955.

OPINION BELOW.

The Supreme Court of Ohio denied the appeal of petitioner to review the judgment of the Court of Appeals for the Eighth Judicial District of Ohio for the reason that no debatable constitutional question was involved. 162 Ohio St. 536 (R. 3, 4). The opinion of the Court of Appeals in the instant case (R. 28-39) has been reported

at 121 N. E. 2d 449; and in the companion case below at 121 N. E. 2d 446 (R. 40-45).[1]

JURISDICTION.

The judgment of the Supreme Court of Ohio was entered on January 19, 1955 (R. 3, 4). The application for rehearing was denied February 9, 1955, by the Supreme Court of Ohio (R. 4). On April 22, 1955, by order of Mr. Justice Reed, petitioner's time to file a petition for a writ of certiorari was extended to and including July 1, 1955. The statutory provision believed to sustain the jurisdiction of this Court is Section 1257 of Title 28 of the United States Code.

QUESTIONS PRESENTED.

1. May a mutual benefit society of the character of a fraternal insurance group require its members to execute a loyalty affidavit which contains statements that are ambiguous, general and so vague as not to give adequate guidance and knowledge to the affiant as to the meaning of said statements upon penalty of suspension or forfeiture of membership rights?

2. May such an association cancel and destroy the insurance and other valuable rights of a member without charges, notice and hearing, when the rules of the association make no provision therefor?

3. Whether membership rights in a fraternal benefit society are entitled to the safeguards of due process and the equal protection of the laws as provided in Section 1 of the Fourteenth Amendment to the United States Con-

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[1] References to the proceedings and record in the Supreme Court of Ohio are designated as "R." References to the stenographic transcript of proceedings and evidence in the Court of Appeals on trial de novo are designated as "Tr."

stitution in absence of self-binding limitations by contract between the society and the member?

STATEMENT.

The petitioner instituted an action in the Court of Common Pleas of Cuyahoga County, Ohio, for relief in equity from the wrongful cancellation and illegal forfeiture of the accident and death benefit certificate (insurance policy) which he carried since 1940 with the respondent herein, The Union & League of Romanian Societies of America, Incorporated, a fraternal benefit society organized and existing under the laws of the State of Ohio, and operating as such in the various states of the United States and in Canada. The petition also contained a second cause of action whereby the petitioner sought further relief in the nature of a mandatory injunction to require the officers of the corporate respondent to permit him to inspect the books, records, and accounts of the respondent. After an adverse decision by the trial court, the action was appealed on law and fact to the Court of Appeals for the Eighth Judicial District of Ohio (Cuyahoga County) along with a companion case entitled *United Romanian Society Carpatina vs. The Union & League R. S. A., et al.*; and upon presentation by stipulation of a single record of the evidence below, the Court of Appeals heard said cases in a trial de novo in accordance with the provisions of Ohio law, and thereupon dismissed the petitions in both cases. A motion for a new trial in the Court of Appeals was overruled. An appeal in both cases was taken to the Supreme Court of Ohio on questions of law involving the constitutional rights of the appellants as guaranteed to them by the Fourteenth Amendment, Section 1, to the Constitution of the United States, and Article I, Section 16, of the Ohio

Constitution. The Supreme Court of Ohio dismissed the appeal in each of the respective cases on the basis that no debatable constitutional question was involved. Thereafter, an application for rehearing was filed in the Ohio Supreme Court, which was likewise denied. A review of the actions of the Supreme Court of Ohio is being sought herein only by the petitioner, Novak N. Marku.

The matter in question was heard de novo in the Court of Appeals which filed an opinion with its decision therein (R. 28-39). The decision was appealed to the Supreme Court of Ohio on the principal basis that the said decision strikes down the constitutional rights of the petitioner. On January 19, 1955, the Supreme Court dismissed that appeal as not involving a debatable constitutional question (R. 3, 4). Thereupon, petitioner filed an application for rehearing with the Supreme Court which was also denied on February 9, 1955 (R. 4, 5-16).

The petitioner became affiliated with the respondent fraternal association by means of an insurance policy which he procured from said association in the amount of $1000.00 through its member society in Canton, Ohio. The respondents herein are the national association and its officers. For purposes of clarity we shall refer to the respondent organization as the "Union & League." The petitioner continued as a member until the time in question herein, during which period he paid premiums on his insurance policy and other assessments to the Union & League.

To the extent that petitioner was a member of the Union & League, by virtue of the insurance policy which he carried with it, he was subject to its constitution and by-laws, as well as the decisions and regulations enacted by the national conventions of the Union & League which met every two years, the convention being the supreme

governing and legislative authority. At the time in dispute herein, the petitioner was the president of the Canton Society, having been elected as such for each of the preceding four years. The present leadership of the national association, the Union & League, dates from the September, 1948, biennial convention held at Youngstown, Ohio. At that national convention, a resolution was adopted providing that all officers of the national association and of its member societies should sign a certain loyalty affidavit. That resolution, adopted in the Romanian language, is in the record in translation (Tr. 135) and it provides as follows (R. 32, 33):

> "The officers of the Union and League and officers of the societies which compose the Union & League shall be obligated to sign a declaration through which they state that they are not communists; that they do not belong to any subversive organization which works against the Constitution and Laws of the United States of America."

The form of affidavit prepared by the national officers in 1948 pursuant to the aforesaid resolution and furnished to the member societies prior to 1951 was, as a matter of fact, copied from that in use by the National Labor Relations Board (R. 57).

The petitioner, of necessity, will refer to the companion case below, hereinafter referred to as the Carpatina case, inasmuch as the issues were identical in both cases, and the testimony and evidence received in said case has been adopted as a part of the evidence in this case, and, together with additional evidence and testimony, comprised the record before the Court of Appeals on trial de novo. The principal relief sought in the companion case below was in the nature of injunction and a declaratory judgment as to the validity of the revised loyalty

affidavit of 1951 (R. 40, 45). The basis for the controversy between the petitioner and the corporate respondent was identical to that of the Carpatina Society of Cleveland; namely the validity of the revised affidavit of 1951. The petitioner and his society believed as did the Carpatina Society that the officers of the corporate respondent were without authority to require the petitioner and others to execute the revised affidavit of 1951 prior to clarifying and/or interpreting the ambiguous and vague statements contained therein.

In December, 1948, and December, 1949, the officers of Carpatina Society and this petitioner as president of the Canton Society received from the national office and executed the non-communist form of affidavit referred to (R. 57). The September, 1950, convention at Windsor, Canada, took no additional action with reference to the non-communist affidavit and in December of 1950, the same form of affidavit previously submitted was sent by the national officers to the Carpatina Society and to this petitioner as an officer of the Canton Society and executed by them and him. In December of 1951, however, upon receipt of the non-communist affidavit, the officers of the Carpatina and Canton societies noted that the previous terms had been supplemented by certain additional provisions, obviously a result of some change on the part of the national officers. The affidavit executed by the officers of the Carpatina and Canton societies, as well as all other societies of the Union & League, in 1948, 1949, and 1950 had three provisions (R. 57). The affidavit received in 1951 (R. 46, 51) contained these same provisions, so far as Items 1 and 3 were concerned, and changed with respect to Item 2, providing not only that the affiant was not *but never had been affiliated with an organization referred to as the I. W. O. (International Workers Order), and had*

never been an active supporter of the latter (R. 46, 51). Completely new additions to the affidavit for the first time appearing in December of 1951 are three paragraphs numbered 4, 5, and 6. They have nothing to do with anti-communism or the requirements of the resolution of 1948. We quote the new provisions 4, 5, and 6 in their entirety.

> "4. I have not been sentenced to prison for a crime nor have I been found guilty of moral turpitude nor have I caused the member societies or the central organization any moral and material loss.
>
> 5. I have not been guilty of mishandling or misappropriating public funds of any social, fraternal or religious organization.
>
> 6. I am not now a suspended or passive (inactive) member of the Union and League of Romanian Societies of America." (R. 46, 51.)

The record reveals that upon receipt of the new version of the affidavit from the national headquarters in December of 1951, the members of Carpatina immediately noted the new provisions and, by formal resolution in meeting assembled, sought clarification from the national organization as authorized by the national constitution and by-laws (Tr. 943). While awaiting such clarification, the officers of Carpatina, in order meanwhile to be on record against communism, and to conform with the resolution of 1948, signed and forwarded to the national organization the same loyalty affidavit (Tr. 229, 277, R. 56), which they had previously executed in the years 1948, 1949, and 1950. They thus again averred their non-acceptance of communism in any form (Tr. 208, 571).

Upon receipt of the affidavit executed by the newly elected officers of the Carpatina Society for the year 1952, the National President wrote a letter (Tr. 956) stating that the national officers could not approve the local

officers and asked the society to send one or two representatives to a meeting of the Executive Committee of the national body on March 8, 1952, to explain the position of the society (Tr. 222). At that meeting, the president of the national society stated to the executive committee that the officers of the Carpatina Society were afraid to sign the new form of affidavit (Tr. 233). Thereupon, at his request, and based upon his representations that Carpatina officers had signed false affidavits and were fearful to declare themselves against communism, the Executive Committee sustained the national president and suspended the entire Carpatina Society until the national convention to be held at Lorain, Ohio, in September, 1952 (Tr. 959).

When the national convention assembled at Lorain, Carpatina Society was denied representation, and was permitted no voice in the organization or conduct of the convention. It was refused permission to vote for the national officers to be elected for the ensuing two years, officers who would have general charge and control of the property, including the beneficial rights of members under the insurance policies on which monthly premiums were payable to the national society by the members of Carpatina, as well as by all other constituent members (Tr. 301, 302, 334, 578). Furthermore, without advance notice to the officers of Carpatina, the national president, at the national convention, referred to a grievance committee, set up by the national convention, certain charges he had drawn up against the twenty-five officers and committee members of Carpatina Society elected by that society in December, 1951 (Tr. 335 and ff.). *None of the aforesaid officers was advised in advance of these charges and they were given no opportunity to defend themselves or even to know that they were being charged with violation of*

any laws of the national association (Tr. 336, 537, 579). As a matter of fact, there was no provision in the national constitution or in its rules and by-laws for delegating authority to a grievance committee to hear charges or punish members (Tr. 338, 339). Nonetheless, this aforesaid grievance committee, chosen by the national convention, heard these unsubstantiated charges presented to them by the national president relating to the officers of Carpatina Society (Tr. 331, 332, 348). In the absence of these officers and with no other evidence than the accusations of the national president, the grievance committee forthwith made a finding that these twenty-five officers had signed false affidavits and recommended suspension of twenty-four and expulsion of one. This finding or report of the grievance committee was thereupon immediately laid before the national convention. With the entire memmership of the society suspended and unable to vote or to defend themselves, and without presentation or hearing of any charges, the national convention approved the findings and recommendations of the grievance committee (Tr. 342, 496, 497). The national convention thus placed "in passivity" twenty-four members and expelled one. This action meant that the twenty-four were denied the right to speak, to vote or to hold office in the local society and in the national body for periods ranging from one to five years, and one member, the attorney for the society and of counsel, on the petition and brief herein, was permanently expelled, and his insurance policy cancelled.

In view of the single record below of the evidence in the Carpatina case and that of this petitioner, and the fact that the actions and the consequences therefor of the Canton Society (of which this petitioner was its president at the times mentioned herein) were the same as the Carpatina Society relative to the revised affidavit of

1951, we deem it advisable to set forth the aforementioned events surrounding the Carpatina case as explanatory background for a proper understanding of the instant cause.

On January 20, 1952, the petitioner was re-elected president of the Canton Society for 1952. Inasmuch as the Canton Society had taken the same position as the Carpatina Society regarding the revised affidavit of 1951, the petitioner executed and submitted the same loyalty affidavit for 1952 which he executed for the three previous years of 1949, 1950 and 1951, and the same as the Carpatina officers (R. 56, 57), while awaiting clarification of the one sent to the societies in December of 1951 to be used for 1952.

Thereafter the Canton Society was notified by the national body that its officers were not approved and to send one or two delegates who would represent the Society at a meeting of the Executive Committee to be held March 8, 1952 (Tr. 993), the same as in the Carpatina case.

Pursuant to said notice the appellant as president presented himself as a delegate and representative of the Canton Society at the meeting, but was not permitted to speak or be heard in behalf of said society and/or for himself (Tr. 822).

Without affording the petitioner an opportunity to be heard as a representative in behalf of said society, the Executive Committee decided that the member society be suspended until the forthcoming convention to be held at Lorain, Ohio, in September, 1952 (Tr. 823). This decision was predicated upon the misrepresentation of the national president to the Executive Committee that the petitioner and other officers of the Canton Society had signed false affidavits and were fearful of declaring themselves against

Communism—the same as had been done in the companion Carpatina case.

As a result thereof, the petitioner was automatically suspended as were all other members of said society and placed under accusation until the forthcoming convention of the corporate appellee to be held at Lorain, Ohio, in September, 1952.

On July 15, 1952, the petitioner had written a letter (R. 55) to the officers of the corporate respondent requesting that he be permitted to examine and inspect the books, records, and accounts of the corporate respondent. In response thereto petitioner received a letter dated July 21, 1952, wherein he was refused the right to examine and inspect but was informed that he would be given an opportunity to make inquiry regarding said records, books, and accounts at the convention of the corporate respondent to be held at Lorain, Ohio, on September 5, 1952 (Tr. 998).

The petitioner was duly elected as a delegate to represent the Canton Society at the Lorain covention of 1952. On August 7, 1952, the Society was notified by the national officers that petitioner was not acceptable as a delegate stating that he was not eligible to be elected a delegate on the basis of Art. IV, Sect. 6, Paragraphs b and c (Tr. 834), which read as follows:

> "Section 6. The active members of the member societies who fulfill all the requirements of the constitution and by-laws, shall have the right to be elected to any office of the member society or to the central organization, excepting when the constitution and by-laws otherwise provide.
>
> The following are not eligible to be elected to office:
>
> (b) Those who are found guilty of moral turpitude, and who have caused the member societies of

the central organization any moral and material losses.

(c) Those under indictment or accusation by any forum of the Member Societies or of the Central Organization." (Tr. 987.)

On cross-examination of the secretary of the corporate respondent, in connection with the serious unsubstantiated charges of said letter, the wanton and malicious conduct of the national officers was clearly established, when the secretary responded, "I don't remember, I don't know," to the query, "When was Mr. Marku found guilty of moral turpitude and by whom and why?" and when he testified that he did not know or remember when a hearing was held on any evidence warranting such a charge (Tr. 835, 836, 837).

The contents of this letter were communicated to the members of the Canton Society at a meeting held at the society's hall. The letter published and implied to the members of said society among other things, that the petitioner had been found guilty of moral turpitude. The petitioner took vehement exception to this publication and implication, and called upon the national officers to prove that he had ever been found guilty of moral turpitude and reminded said national officers that such publication necessarily had the result of injuring the petitioner in his practice as an attorney at law and that if he were ever found guilty of moral turpitude as alleged he could be subjected to disbarment (R. 47-49).

The petitioner presented himself with the proper credentials from the Canton Society as a delegate to the convention of the corporate respondent held at Lorain, Ohio, in September, 1952. At that time, he was denied the right to be seated and to participate as a delegate by the president and secretary of the corporate respondent. The

petitioner was not permitted to participate in said convention. More seriously, he was never notified that the convention or any other body was going to proceed against him as an individual member nor was he given any opportunity to appear or defend against any charges that may have been placed against him.

During the convention, a grievance committee, acting upon the charges placed before it by the national president to the effect that the petitioner and other officers of the Canton Society had executed a "false affidavit," rendered a finding of guilt on said charge and recommended to the convention at large that the petitioner be punished, along with another member, by expulsion from the society and the national organization, and that the other officers of the society be punished by varying degrees of suspension ranging from periods of six months to five years. As a result thereof, the officers were denied and deprived of the right to speak, vote, or hold office in the society or the national organization (Tr. 851, 852).

Immediately upon the recommendation of the grievance committee to the convention at large that the petitioner be expelled from the organization, and before the convention had acted upon said recommendation, the petitioner requested that he be accorded the right to be heard and to defend against said finding and recommendation (Tr. 860, 861). The national officers' response to this plea was to have petitioner escorted and evicted from the convention meeting hall (Tr. 853).

Following petitioner's eviction from said convention hall, the convention at large did act upon the grievance committee's recommendation and expelled petitioner from membership in the Canton Society and the corporate respondent, and ordered the cancellation of petitioner's

property right in and to his insurance policy issued by the corporate respondent (Tr. 860, 906, 908).

As a result thereof, the petitioner was also deprived of the right and opportunity to make inquiries about and to inspect the books, records, and accounts of the corporate respondent (Tr. 861), despite the assurance that he would be given the opportunity to make inquiries concerning and to inspect the corporate respondent's books, records, and accounts at the convention of Lorain, Ohio, in September, 1952 (Tr. 998).

SPECIFICATION OF ERRORS TO BE URGED.

1. The Court of Appeals erred in holding that the respondents had authority and the right to require the petitioner to execute the revised loyalty affidavit of 1951.

2. The Court of Appeals erred in holding that the respondents had the power and the right to expel petitioner and to cancel his insurance policy for failure to execute the loyalty affidavit of 1951.

3. The Court of Appeals erred in holding that the petitioner was lawfully expelled, and his insurance policy properly cancelled without charges, notice and hearing.

4. The Supreme Court of Ohio erred in dismissing the appeal of petitioner on the basis that no debatable constitutional question was involved.

REASONS FOR GRANTING THE WRIT.

1. The decision of the State Court of Appeals sanctions the deprivation and destruction of petitioner's property rights in his insurance policy in violation of due process of law.

The instant controversy arose as a result of the revised loyalty affidavit of 1951 and became the source of the difficulties which beset this petitioner. The problem which confronted this petitioner and other officers of the Canton Society was identical to that of the Carpatina Society in the companion case below. The petitioner and his society believed as did the Carpatina Society that the officers of the Union & League were without authority to revise and reconstruct the loyalty affidavit in 1951 and require the petitioner and other officers to execute it prior to clarifying and/or interpreting the ambiguous and vague statements therein. The record shows that the petitioner and Carpatina Society did not refuse to sign the revised affidavit, *but that they sought an interpretation or clarification as to the meaning which the national officers attribute to the new statements which they inserted and which first appeared in the affidavit in December of 1951.* The serious objection to the affidavit in question is that it contains statements to be sworn to under oath which are ambiguous, general, and so vague as not to give adequate guidance and knowledge to the affiant as to the exact meaning of the statements which he is called upon to swear to under oath. The inability of a member to fully understand its terms prevents him from executing the affidavit and automatically leads to the denial of his fundamental rights. A member is deprived of his rights and privileges without having committed any proscribed act or without having violated any law. Such is the case of this

petitioner and others as shown by the record. The affidavit in question places the burden upon the affiant-member to resolve the ambiguities and interpret the statements in the affidavit at his peril. He must first define and interpret the statement, for example, "nor have I been found guilty of moral turpitude," and then speculate that his definition and interpretation of this ambiguous term is identical to that of the national officers in order to qualify for office or as a convention delegate, and more important, so as not to involve him in perjury. *By what authority can the members be forced into this position of jeopardy?* How can an ordinary layman be expected to define and interpret "moral turpitude" when even our judicial tribunals cannot agree upon its meaning? In his lecture under the Ernst Freund Lectureship at the University of Chicago Law School on February 11, 1953, entitled "Some Observations on Supreme Court Litigation and Legal Education," Mr. Justice Frankfurter of this Honorable Court stated as follows:

> "There are kindred issues of ambiguous legal standards. For example, statutes dealing with 'moral turpitude,' dealing with or condemning people or excluding people or deporting people or denying citizenship for not satisfying the law because they are guilty of 'moral turpitude.' *What does that mean?* Well, an enterprising judge, a judge of stimulating and fermenting suggestiveness, says quite seriously that we ought to take a Gallup poll. Another judge of great eminence says you must get the feeling of the community, discover what is the sense of the community. *You can see how easy that is to determine.* A third jurist—a jurist being a person who hasn't the responsibility for decision—thinks the judge should look inside of himself and should act on his own moral standard." (Italics ours.)

In this same regard, we further invite this Court's attention to a recent Ohio case entitled *In Re Dombey*, 68 Abs. 36 (21 Ohio Bar 31), decided July 3, 1954, by a special three judge court. This action involved a proceeding against an attorney at law charged with conduct involving moral turpitude. In its opinion, the court stated with reference to the term "moral turpitude" as follows:

> "* * * The statute does not define 'moral turpitude,' and the term is almost impossible of exact definition. The phrase 'moral turpitude' has been defined many times by courts, and often the definitions have been more confusing than enlightening. * * * The phrase 'moral turpitude' is found in many Federal and State Statutes. As used in the Federal Deportation Statute that phrase has been given one meaning; as used in connection with criminal acts another meaning; and as used in disbarment proceedings a third meaning. * * *."

In accord with the foregoing reasoning, the officers of petitioner's Society requested the national officers to inform them as to the meaning which they place on said term, since they inserted it in the affidavit, and they would ultimately interpret its meaning for the purpose of the affidavit. And what is the meaning of "causing moral and material loss" for purpose of the affidavit? If a member had inserted a paid advertisement in the annual calendar or almanac of the International Workers Order, as was done by the national president, Craciun, respondent herein, and vice-president, Pulca (Tr. 433, 434, 435, also Carpatina Ex. 31), can that be interpreted as having "actively supported the I. W. O." as required to be foresworn in the affidavit? Yet, in absence of an official interpretation by the national officers, as requested, some members may conceivably reach such an interpretation and thus feel unable to execute the affidavit, and thereby for-

feit fundamental rights. If so, how did respondent Craciun qualify for office in view of his support of the I. W. O.? With reference to the I. W. O. (it has been dissolved and no longer exists), many members have belonged, at one time or another, to the Romanian branch of said fraternal association for insurance purposes only. Such was the complaint of the member society of Salem, Ohio, before the March 8, 1952, meeting of the executive committee (Tr. 763, 764). Under the affidavit in question, the fact of membership alone disqualifies, although membership may have been innocent, and regardless of knowledge of the organization to which they belonged. The affidavit clearly violates fundamental rights guaranteed under the due process clause of the federal constitution. To sustain the affidavit in its present form, as was done by the Court of Appeals, results in granting powers to the corporate respondent and its officers that are unlimited and in excess of the constitutional limitations of the federal constitution. Such associations as this corporate respondent are not above the law of the land, nor altogether a law unto themselves.

The petitioner had an absolute right under the provisions of the association's laws to seek an interpretation and clarification of the new additions to the affidavit before executing it. Instead of receiving the clarification requested, petitioner was falsely accused by the national president of having signed a "false affidavit" (R. 56), although the affidavit, which he executed for 1952 (R. 56) (while awaiting clarification of the revised one) was identical in every respect to that which he executed for the three prior years (R. 57).

Under paragraph 2 of the affidavit as revised in 1951, the national officers provided that active support of or membership in the International Workers Order or past

affiliation "with any organization which has been or is subversive or identified as communist, Nazist or Fascist, or in any way un-American or contrary to the American principles and ideals of free government" should be a disqualification for office in the local society and national association. It was the request for clarification of such patently vague statements which appeared for the first time in the affidavit in 1951, *and* the refusal to forswear to same prior to clarification thereof, that led first to the suspension and then subsequent forfeiture of all rights of this petitioner and others, including cancellation of petitioner's insurance policy with the corporate respondent. Does this assertion of arbitrary power by a voluntary association leading to the complete destruction of a member's property rights come within the prohibition of Section 1 of the Fourteenth Amendment to the Constitution of the United States? Petitioner submits that the decision and holding of this Court in the recent case of *Wieman v. Updegraff*, 344 U. S. 183 (1952), commends itself to the problem of the loyalty oath in the instant case.

The fact that the property rights which are destroyed by the arbitrary use of a loyalty oath arise from membership in a fraternal insurance society does not, we believe, remove such action from constitutional restraint. But here, with the decision of this Court in the Oklahoma case before them, the Ohio Appeals Court and Supreme Court, refused to extend the protection of due process to the insurance rights of this petitioner. The proposition affirmed by this Court in *Shelley v. Kraemer*, 334 U. S. 1 (1948), "that the action of state courts and judicial officers in official capacities is to be regarded as action of a state within the meaning of the Fourteenth Amendment, * * *" is applicable, we submit, to the actions of the state courts herein whereby they sanctioned the destruc-

tion and deprivation of petitioner's property rights in violation of the safeguards of the Fourteenth Amendment. Does the arbitrary use of a test oath combined with attainder become less dangerous and offensive when required by a fraternal benefit society which like the within oath becomes the basis of forfeiture of property rights due to the inability of a member to execute it? We think not. The opinion of the Court of Appeals concluded that the corporate respondent had authority to require petitioner and others to take the oath in question containing the vague and ambiguous statements, and that in view of the failure of petitioner to execute such affidavit, he was lawfully expelled, and his insurance policy properly cancelled. The record clearly shows that petitioner's insurance policy and rights therein have been forfeited not because he committed any offense under the laws of the organization or otherwise, not because he refused to execute a loyalty oath, but because he sought clarification of the new additions which were inserted in the loyalty oath for the first time in 1951.

2. The decision of the Court of Appeals, and the refusal of the Supreme Court of Ohio to review said decision, constitutes a denial of the equal protection of the laws to this petitioner as established by the well settled decisional law of Ohio and as guaranteed to him by the laws of State and Nation.

The instant controversy presents the serious question as to whether membership rights in a voluntary association in the nature of a fraternal insurance society are entitled to federal constitutional protection? Stated otherwise, do such members waive or relinquish their fundamental constitutional rights upon joining such associations in absence of any voluntary limitation by contract?

The Ohio courts have denied the petitioner his constitutional rights in at least one, and possibly two, respects. First, the Ohio courts permitted the deprivation of petitioner's rights in his insurance policy without any probative evidence of wrongdoing by the petitioner. Second, they sanctioned the forfeiture of petitioner's property rights in a manner completely devoid of the fundamental safeguards of our law requiring charges, notice and a hearing with an opportunity to make a defense before being condemned or prejudiced in one's rights.

The basis for visiting such serious punishment upon petitioner is readily apparent. Prior to the Lorain convention of 1952, he questioned certain financial and audit reports of the officers of the corporate respondent. On July 15, 1952, he requested the right to inspect the original records, books and accounts of the association (R. 55). His request was denied at that time, but he was assured of the opportunity to do so at the Lorain convention. It is significant that when he presented himself at the convention, he was not only denied the exercise of this valuable right, but he was also not permitted to participate in said convention and was expelled from the association.

The Court of Appeals sanctioned and condoned the actions and procedure pursued and gave no consideration whatsoever to the uncontroverted facts in the record that this petitioner was expelled "without having committed any offense," that he was punished without "a regularly conducted trial," on due notice "by properly constituted corporate authorities," and a "judgment arrived at in good faith." It was of no legal consequence to the State courts that the punishment meted out to the petitioner was unduly oppressive and without warrant and justification in law. More seriously, the Appeals Court was not moved by the fact that petitioner's property rights in his

insurance policy have been forfeited contrary to the plainest principles of justice.

There is no support in law for the actions of the respondents in finding petitioner guilty without presenting him with any charges, without notice, and without giving him an opportunity to appear, to be heard, and to defend. Such actions are repugnant to the concepts of natural justice and violative of the due process clause of the Federal Constitution. Not only are such actions an abridgment of the fundamental constitutional rights guaranteed to petitioner, but the procedure pursued by the respondents has been frowned upon by the courts throughout the land. The proposition of law which has been enunciated over and over again by the courts throughout the land in questions relating to membership rights in mutual benefit societies is best summarized in the case of *Taboada v. Sociedad Espanola De Beneficencia Mutua*, 27 *A. L. R.* 1509, 215 Pac. 673. The plaintiffs in this case sought a writ of mandamus to compel defendants to restore them to membership in, and to allow them free access to, the meetings of the defendant society. The Supreme Court of California affirmed the trial court in granting the writ, and during the course of its opinion stated as follows:

> "* * * It is a fundamental principle of justice that no man may be condemned or prejudiced in his rights without an opportunity to make his defense. This rule is not confined alone to courts of justice and strictly legal tribunals, but is applicable to every tribunal which has the power and authority to adjudicate questions involving legal consequences. And a society acting upon the expulsion of a member is a quasi-judicial body, and its hearing is a quasi-judicial hearing * * *. The proceedings of the society, in order to be regular and legal, in effect, must there-

fore provide for notice to the accused and afford him an opportunity to be heard * * *." (Citations omitted.)

The opinion of the Court of Appeals reveals that it either ignored or rejected the rules under which the issues should have been determined. The court concerned itself simply with the question as to whether this association had the right and power to punish its members and whether it could do so to the extent involved in the within cause. Having found that the national body did have power to discipline, it thereby concluded that the penalty imposed against the petitioner was proper and valid. This question as to the power of the corporate respondent to discipline its members was not in issue. It was, and it is here conceded, that such organizations have an inherent right to punish their members even in the absence of an express provision therefor. However, one of the principal questions presented to the Court of Appeals was whether the corporate respondent could deal with the rights of its members, under the guise of family chastisement, in a manner which is repugnant to our democratic ways and contrary to the demands of fair play, which, in the last analysis, is the spirit of the law of our land.

The grave error of the Court of Appeals was its assumption that the corporate respondent had the power to require the petitioner to execute the affidavit in question, and that refusal to take the oath as prescribed by the changes to the affidavit in 1951, operated as an admission of wrongdoing, automatically authorizing the Union & League to impose the penalty which was meted out to this petitioner. Under the theory that such organizations have the power to punish their members free of outside interference, the Court of Appeals decided that the actions taken against the petitioner and others by the Union &

League were conclusive upon the court. This general proposition of law was distorted by the court into a complete disregard of its judicial function in the protection of the rights of the petitioner as guaranteed to him by the Constitution and laws of this nation. It is one thing thus to recognize the freedom which the law wisely leaves to these associations in regulating themselves. It is quite another thing, however, to sanction the deprivation or complete destruction of a member's rights by these associations in a manner which is repugnant to our concepts of justice and fair play. If a voluntary association acts arbitrarily in relation to the rights of its members, that is precisely the kind of action, as we understand, which the due process clause forbids.

The deference paid to voluntary associations by the courts is closely analogous to that which is accorded to regulatory bodies. The legal principle applicable to regulatory commissions, we believe, is equally controlling with regard to voluntary associations. This principle has been clearly enunciated by Mr. Justice Cardozo in delivering the opinion of this Court in the case of *Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio,* 301 U. S. 292, at page 304:

> "Regulatory commissions have been invested with broad powers within the sphere of duty assigned to them by law. Even in quasi-judicial proceedings their informed and expert judgment exacts and receives a proper deference from courts when it has been reached with due submission to constitutional restraints. Indeed much that they do within the realm of administrative discretion is exempt from supervision if these restraints have been obeyed. *All the more insistent is the need, when the power had been bestowed so freely, that the 'inexorable safeguard' of a fair and open hearing be maintained in its integrity.*

The right to such a hearing is one of 'the rudiments of fair play' assured to every litigant by the Fourteenth Amendment as a minimal requirement. There can be no compromise on the footing of convenience or expediency, or because of a natural desire to be rid of harassing delay, when that minimal requirement has been neglected or ignored." (Citations omitted.) (Emphasis ours.)

While we recognize the principle as being firmly and correctly established that civil courts ought not to rejudge the decisions of voluntary associations as to matters within their jurisdiction, we cannot accept as correct the conclusion of the Court of Appeals that the actions of such bodies are immune from judicial scrutiny and outside of the protective provisions of our constitution. If this were true then any such governing body could make a far-reaching decision (such as was done by the respondents relative to the reconstructed loyalty affidavit), obviously in conflict with the rules of the association and contrary to the laws of the land, and yet a party affected thereby would be unable to appeal to the authority of our civil courts for redress. Voluntary associations and their tribunals could be turned into offices of tyranny or fraud, and yet under the conclusions of the Court of Appeals there would be no civil redress. Clearly, it is not the intention of our law to recognize as legitimate the revolutionary action of a majority of an organization in fraud of the rights of a minority seeking to maintain the integrity of the laws and original compact.

Examination of the record in this case clearly discloses that due process was violated because there was no observance by the national officers, nor by the executive committee, nor by the national convention, of the right to notice, the right to be heard, the right to know of what one was accused. The charges of the national president,

respondent herein, were themselves false. The record reveals that the petitioner as an officer never signed a false affidavit. He signed a non-communist affidavit, in entire compliance with the ruling of the national convention of 1948 (R. 33, 56, 57). Yet the grievance committee, without any hearing on the president's charges, and without notice to the petitioner as the alleged offender, found him guilty, and decreed his expulsion and the cancellation of his insurance rights. The national convention, likewise misled as to the facts by the national president, in turn made a like mistake. The instant case shows the reason for insistence by the courts that no one under democratic process should be tried in absentia and without notice.

As stated by Mr. Justice Douglas in his concurring opinion in the case of *Joint Anti-Fascist Refugee Committee v. McGrath,* 341 U. S. 123:

> "Notice and opportunity to be heard are fundamental to due process. * * * The rudiments of justice, as we know it, call for notice and hearing—an opportunity to appear and to rebut the charge * * *."

While recognizing that rights of individuals in mutual benefit associations cannot be expected to be observed with all the technical niceties conducted by a court of law, petitioner believes that the record in this case shows such shocking and flagrant disregard of his rights, and such invasion of valuable property rights, involving forfeiture of his financial security in his beneficial insurance policy, that a judicial tribunal alone can protect and restore him to these rights. From the undisputed facts, petitioner believes it apparent that no improper acts were committed by him and that he was falsely charged and illegally punished. It is significant that Novak N. Marku, petitioner herein, was the legal advisor and attorney of record for the Canton Society and he has been made to suffer dis-

proportionately because of his courage and advice and his resistance to what appeared to him to be oppressive, tyrannical and illegal conduct. The expulsion of Marku was exhibition of the kind of conduct by the national officers displayed by one-time European dictators who believed their despotic ends could best be accomplished by the exile of attorneys bred in traditions of freedom. This expulsion, if carried out, would deprive the Canton Society of its one active legal member, and for him, it would mean the entire loss of association with friends and the cancellation of his beneficial interest in the insurance policy, for the future enjoyment of which he had been making payments for many years.

CONCLUSION.

The issue herein is of vital concern to the entire membership of the corporate respondent. Ever since the individual respondents and their clique came to power in 1948, the organization has been conducted by a virtual dictatorship. The Carpatina and Canton Societies have been without representation in the conventions of the Union & League since 1948. The Carpatina Society is the oldest, and until the recent difficulties, had been the largest member society of the Union & League. The enlightened and courageous memberships of these societies were quick to contest the arbitrary conduct upon which the respondents embarked immediately after coming to power. The record shows that other societies and members disputed the actions of the national officers. Unfortunately, other than the petitioner and the Carpatina Society in the companion case, they did not have the courage of their convictions and were fearful to stand up for their rights in view of the seeming futility thereof. A dark shadow of fear has been cast over the membership of the Union & League. The

decision of the Court of Appeals has served only to strengthen the dictatorial hand of the respondents, and has removed any semblance of effective opposition to those in power. The State Courts permitted the forfeiture of valuable rights and denied judicial protection to the property rights of this petitioner. The Court of Appeals evaded the substantial questions which were presented for determination. For the State Courts to sustain the forfeiture of the beneficial rights herein has been, in effect, an aiding and abetting of the unlawful actions of the controlling officers, and a sanction of the vicious underlying purpose of the revised affidavit in dispute. The case involves a serious disregard of our basic principles of law.

We respectfully urge that this petition for a writ of certiorari be granted so that this Honorable Court may take a full look at the controversy in the interest of protecting fundamental rights granted to this petitioner by the Constitution of this nation.

Respectfully submitted,

NOVAK N. MARKU,

Attorney for Petitioner.

JOHN R. VINTILLA,

Of Counsel.

APPENDIX A.

Opinion of the Court of Appeals.

No. 23,212.

IN THE COURT OF APPEALS

EIGHTH JUDICIAL DISTRICT,

STATE OF OHIO, CUYAHOGA COUNTY, SS.

NOVAK N. MARKU,
Appellant,

v.

UNION & LEAGUE OF ROMANIAN SOCIETIES OF AMERICA, INC., *et al.*,
Appellees.

OPINION.

Argued July 8, 1954.
Decided Aug. 16, 1954.

HUNSICKER, *J.*

This is an appeal on questions of law and fact from the Court of Common Pleas of Cuyahoga County, Ohio.

Novak N. Marku filed an amended petition in the trial court against the Union & League of Romanian Societies of America, Inc., and its president, its secretary, and its attorney, in which amended petition he alleged in substance that: he is the president of one of the constituent member societies of the corporate defendant herein; he is the holder of a death, sick and accident benefit certificate in such corporate defendant; he is president of a branch society of the corporate defendant; he signed for the year 1952 a loyalty affidavit and sent it to the corporate defendant, as required by the bylaws of the Union

& League of Romanian Societies of America, Inc.; he, at the request of the corporate defendant, attended an executive committee meeting on March 8, 1952, as a delegate and representative of the branch member society Traian & Iuliu Maniu Society of Canton, Ohio, to answer certain charges made against his branch society by the officers of the corporate defendant; he was not allowed to be heard or defend as a delegate of his society; the executive committee suspended until the next convention his society and placed him (Novak N. Marku) under "accusation" until the forthcoming convention of the corporate defendant, to be held at Lorain, Ohio, in September 1952; he was duly elected a delegate to this convention by his branch society, but that "the individual defendants Joseph J. Cracium and George Dobrea, as president and secretary, respectively, of the corporate defendant, refused to approve the plaintiff, Novak N. Marku," as a delegate; he was denied a seat as a delegate, was tried by a grievance committee without having been notified personally or in writing of any charges, and "without being given notice and an opportunity to appear, be heard and defend against any charges before the committee of the convention body"; the convention body, upon recommendation of the grievance committee, expelled him from the branch society and the corporate defendant organization; the actions of the officers of the corporate defendant in denying the member society "Traian & Iuliu Maniu" of its rightful representation in the convention and the refusal to seat the plaintiff (Marku) as the representative of the member society "were in wreckless (sic) disregard of the material and fundamental rights of 192 members of said society * * *"; he "has exhausted all the remedies available to him within the defendant corporate organization and has no adequate remedy at law."

For a second cause of action, Marku says: he made demand in writing on the corporate defendant on July 15, 1952, for an inspection of the books and records of the corporate defendant, which demand was refused; he was told he could examine the books and records at the convention to be held in Lorain, Ohio, in September, 1952; he presented himself at the convention as a delegate of his member society, and again asked to see the books, records and financial reports of the corporate defendant, which request was again refused; the corporate defendant is wilfully withholding from the plaintiff, Marku, information in which this plaintiff has an interest.

The prayer of this petition asks that the corporate defendant and the individual defendant officers be enjoined from "denying and/or depriving the plaintiff of any or all of his rights, interest and privileges as a member of the society 'Traian & Iuliu Maniu' and the corporate defendant 'The Union & League R. S. A., Inc.,' directly or indirectly or in any manner whatsoever"; that plaintiff, Marku, be restored to all of his rights as a member in such societies; and that a mandatory injunction issue, requiring the corporate defendant and the appropriate officers thereof "to permit the plaintiff and his attorney and agents to inspect all of the books, records and accounts of the defendant corporation, Union & League R. S. A., Inc.," etc.

A joint answer to this amended petition has been filed by the defendants, in which they say that: plaintiff, Novak N. Marku, "is not a member of the defendant corporation, the Union & League of R. S. A., Inc., having been excluded by the convention held September 5, 1952"; this convention refused to accept plaintiff, Marku, as a delegate or member of the convention; the plaintiff, Marku, did not, as an officer of his branch society, file a proper loyalty affidavit, but did mislead his branch society "Traian & Iuliu

Maniu" by forwarding to the corporate defendant an improper loyalty affidavit, in violation of the constitution, by-laws and regulations of the Union & League of R. S. A., Inc., and of "Traian Iuliu Maniu Society."

The defendants, by way of further answer, say that they "have no knowledge of any inquiry from this plaintiff as to any information he desired from the defendant corporation. They further allege that the fraternal insurance laws of Ohio provide the "manner in which plaintiff may procure information which he desires if it has been refused by the defendant corporation, and, therefore, plaintiff has an adequate remedy at law * * *."

As a second defense, the defendants say that: "* * * the plaintiff has not been denied his rights and has not complied with the constitution and by-laws, rules and regulations of the parent organization, the defendant corporation, the Union & League of R. S. A., Inc., and those of the subordinate society in which plaintiff was a member, and that the plaintiff has not exhausted all of his remedies within the organization as to his rights and that he has an adequate remedy at law."

Thereafter, the within action was heard in the trial court on the issues made by these pleadings, immediately following two companion actions. The testimony and evidence received in the companion cases (Nos. 643,431 and 643,463 in the Common Pleas Court, which were thereafter appealed and became No. 23,211 in the Court of Appeals, and have also this same day been decided by the Court of Appeals), so far as applicable herein, has been adopted as a part of the evidence in this case, and, together with additional testimony and evidence, comprises the record before this Court.

The record is long, involved, and replete with extraneous matters. Reduced to a single proposition, the

question in this case revolves around the validity of a loyalty affidavit sent by the corporate defendant herein to the branch society and their officers in 1951, for the purpose of having such loyalty affidavit executed by the officers elected to manage the affairs of the branch or member societies for the year 1952.

At the convention of the Union & League R. S. A., Inc., held at Youngstown, Ohio, in September, 1948, a resolution was adopted, providing that all officers of this corporate defendant and of its member societies should sign a loyalty affidavit. This resolution, adopted in the Romanian language, is (translated to English) substantially as follows:

> "The officers of the Union and League and officers of the societies which compose the Union & League shall be obligated to sign a declaration through which they state that they are not Communists; that they do not belong to any subversive organization which works against the Constitution and Laws of the United States of America."

A form of affidavit was later prepared by the officers of the corporate defendant, pursuant to authority granted by their constitution and by-laws; and, pursuant to a specific resolution of the convention, such affidavit was printed by the corporate defendant. This form of affidavit was executed by the proper persons without question or objection.

In 1951, for the officers elected to act in the year 1952, a new form of loyalty affidavit was prepared and forwarded to the member societies and their newly-elected officers. This new form of affidavit was prepared after an executive meeting in March, 1951, at which a resolution was adopted directed to those members who believe in subversive activities, whether Fascist, Nazi, Communist,

or other un-American. This meeting decided that no such member could be an officer of the corporate defendant or of a branch society.

The plaintiff herein, Novak N. Marku, did not execute such new loyalty affidavit, although he did sign a loyalty form under protest, after a number of requests by the officers of the corporate defendant to execute the loyalty affidavit, directed to him and the branch society of which he was a member.

Upon receipt of the signed but unexecuted loyalty form, sent to the Union & League R. S. A., Inc., by Marku, the officers of that body, the corporate defendant herein, requested that a delegate be sent by "Traian & Iuliu Maniu," the branch society, to a meeting of the executive committee to be held in Cleveland, Ohio, in March of 1952. The plaintiff, Marku, appeared at this executive committee meeting but was not accepted as a proper delegate of his society.

All of the proceedings of the several conventions and of the several executive committee meetings were reported in the official publication of the Union & League R. S. A., Inc. At the executive committee meeting in March, 1952, "Traian & Iuliu Maniu," and the plaintiff, Marku, were placed under "accusation" until the convention of 1952. It was after this action of the executive committee that Marku sought to examine the books, records and financial reports of the corporate defendant herein.

There is no need in this opinion to set out all of the various powers and duties of the corporate defendant, its officers, executive committee, member societies, and individual members. This Court has read and examined carefully the constitution and by-laws of the parent body, copies of which are made a part of the record. We do wish, however, to point out that, according to Article IV, Sec-

tion 6, of the by-laws, a member "under indictment or accusation by any forum of the member societies or of the central organization" was not eligible to be elected to office. In conjunction with this article and section, Article II, Section 13, of the by-laws, said:

> "The member societies shall elect their officers by secret ballot in the month of December of each year who shall be installed in office at the following January meeting. They shall report the names of their newly elected officers immediately after every election, to the central office for the approval of their qualifications. In case any newly elected officers shall not be qualified in conformity with the by-laws of the U. & L. R. S. A., Inc., the president or secretary shall notify the member society to that effect and a new election for that office shall be held at the following meeting. Any appeals by the member society as to the qualification of a newly elected officer must be made to the executive committee which shall have full power to make the final decision. In such cases the members or member societies are strictly forbidden to appeal to the civil courts."

If the officers had the authority to present to the member society and its newly-elected officers the new form of loyalty affidavit, which this plaintiff, Novak N. Marku, did not execute, then all action thereafter taken by the officers and executive committees of the corporate defendant in refusing to accept Marku as a delegate was proper under the constitution and by-laws of the voluntary association of which he, Marku, was a member, until such matter could be presented to the convention to be held in Lorain, Ohio, in September, 1952. At that convention, if the prior action taken by the officers and executive committee was lawful under the constitution and by-laws of the corporate defendant, Marku could not be a delegate or represent, on

the floor of the convention, his branch society. The action taken by the convention in voting his expulsion as a delegate, hence, was proper.

Under what authority and by what right could the new loyalty affidavit be required of Marku and the officers of "Traian & Iuliu Maniu"? This question must be answered in favor of the authority of the corporate defendant, for the following reasons:

First, by the authority of the resolution of the convention of September, 1948, it was directed that a loyalty affidavit of some form be presented to each newly-elected officer of the corporate defendant and the newly-elected officers of the member societies.

Second, the power, duty and authority to prepare a form of loyalty affidavit rested with the officers of the corporate defendant.

Third, loyalty not alone to the United States was in contemplation of the convention, but loyalty also to the corporate defendant and its member societies; hence, the officers and executive committee merely followed the form of eligibility for office set out in the by-laws (Article VI, Section 6), which were as follows:

> "The active members of the member societies who fulfill all the requirements of the constitution and by-laws, shall have the right to be elected to any office of the member society or to the central organization, excepting when the constitution and by-laws otherwise provide.
>
> "The following are not eligible to be elected to office:
>
> "(a) Those sentenced to prison for major crimes.
>
> "(b) Those who are found guilty of moral turpitude, and who have caused the member societies or the central organization any moral and material losses.

"(c) Those under indictment or accusation by any forum of the member societies or of the central organization."

We have, above, discussed the power and authority of the executive committee and the convention of September, 1952, to reject Novak N. Marku as an officer and a delegate of his branch society, "Traian & Iuliu Maniu." Did that convention have the right to expel Marku as a member of his society and cancel his benefit certificate or policy? (He was tendered the cash surrender value of his policy but refused to accept it.)

It is one of the declared purposes of the organization herein (Union & League R. S. A., Inc.), as provided by its constitution, Article III (a), "to compensate its members by means of benefits in case of injury and accident, and their beneficiaries in case of death." Only "active" or "passive" members may contract for benefits (insurance).

It is also provided in Article IV, Section 1, of the by-laws that "Every member is obliged to observe the constitution and by-laws of the U. & L. R. S. A., Inc." In accord with Article IX, Section 2, of the by-laws, "any changes, additions or amendments to said articles of incorporation, constitution and by-laws and rules and regulations of the central organization, duly made or enacted subsequently to the issuance of said benefit certificate, shall be binding upon the member * * *." It is also further provided in Article VII, Section 3, of the by-laws, that the regular convention of the U. & L. R. S. A., Inc., which is the highest governing body of this organization, may "punish by penalty, fine, passivity or expulsion, those found guilty of violating the constitution, by-laws or insurance laws; and it shall have the power to do and perform any and all other acts and things which it deemed essential to the welfare and perpetuity of the organization."

In the light of the broad powers of the convention of U. & L. R. S. A., Inc., and the action taken thereunder at the meeting held in Lorain, Ohio, in September, 1952, the appellant, Marku, was lawfully expelled, and his benefit certificate or policy properly cancelled.

Does Marku have a right to inspect the books, records and financial reports of the corporate defendant, as requested by him in July, 1952?

There is no specific provision in the constitution or by-laws which permits a member of a branch society to examine the books and records of the corporate defendant. Provision is made, however, by Article II, Section 11, of the by-laws for a member society to "request any information from the central office. The office shall promptly give written replies to all requests."

The statutes of Ohio with regard to fraternal insurance, in effect when Marku made his request to inspect the books, were Sec. 9462, *et seq.*, G. C.; and Sec. 9406 thereof gave to the superintendent of insurance power to examine into the affairs of the corporate defendant.

It should be remembered that the petition which seeks to compel such examination, was filed by Marku after he ceased to be a member of the society; and since we have determined that his expulsion and the subsequent cancellation of his benefit certificate were proper, this Court cannot order an examination of the records, even though we assumed that a member of a fraternal benefit society has such a right.

For the reasons above set out, the appellant, Marku, is not entitled to the relief he seeks in this Court.

The amended petition is dismissed, at the costs of appellant.

DOYLE, *P. J.*, and STEVENS, *J.*, concur.

(Judges of the Ninth District sitting by designation in the Eighth District.)

APPENDIX B.

Journal Entry of the Court of Appeals.

(No. 23,212—caption omitted.)

September 13, 1954:

This cause came on to be heard before this Court as a trial de novo, being an appeal on questions of law and fact of plaintiff-appellant, Novak N. Marku, from an order of the Court of Common Pleas of Cuyahoga County, Ohio, and was submitted to the Court on the original papers and pleadings, transcript of docket and journal entries in said court below, and, by stipulation, a transcript of evidence offered in the court below by plaintiff-appellant and of evidence offered by defendant-appellees in said court below when the trial of this cause was had in conjunction and together with two companion cases (numbers 643,431 and 643,463, which were combined and are now before this Court as Court of Appeals, Eighth District of Ohio number 23,211); on consideration whereof the Court finds, on the issue joined, in favor of the defendant-appellees.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the amended petition of the plaintiff-appellant be, and the same hereby is, dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the costs of these proceedings shall be taxed against the plaintiff-appellant. To all of which appellant excepts. Cause remanded to the Common Pleas Court of Cuyahoga County for all further proceedings herein.

APPENDIX C.

Order of the Supreme Court of Ohio Dismissing Appeal as of Right.

Jan. 19, 1955:

It is ordered and adjudged that this appeal as of right be, and the same hereby is, dismissed for the reason that no debatable constitutional question is involved.

Appeal dismissed.

WEYGANDT, C. J., MATTHIAS, HART, ZIMMERMAN, STEWART, BELL and TAFT, JJ., concur.

APPENDIX D.

Opinion of the Court of Appeals in Carpatina Case.

No. 23,211.

IN THE COURT OF APPEALS.

STATE OF OHIO, CUYAHOGA COUNTY, SS.

UNION & LEAGUE OF ROMANIAN SOCIETIES OF AMERICA, INC., *et al.*,
Plaintiffs-Appellees,

v.

ELI COTOFAN, *et al.*,
Defendants-Appellants.

UNITED ROMANIAN SOCIETY CARPATINA,
Plaintiff-Appellant,

v.

UNION & LEAGUE OF ROMANIAN SOCIETIES OF AMERICA, INC., *et al.*,
Defendants-Appellees.

STEVENS, *J.*

This is an appeal on questions of law and fact from a judgment of the Court of Common Pleas of Cuyahoga County, in favor of The Union & League of Romanian Societies of America, Inc., et al.

The two cases above captioned were consolidated below, and are here presented as one appeal.

The first action captioned above seeks an accounting and restitution of the funds and property of United Romanian Society Carpatina, alleged to be in the possession of appellants, and that such appellants be restrained from holding themselves out, or acting, as duly

constituted officers of the Society; that the duly elected officers of the Society be declared to be such, and allowed to have possession of the Society premises for the purpose of holding the Society's regular annual election.

The second above captioned action seeks the reinstatement of the excluded and passive officers of the Society to full membership in the Union, and a declaratory judgment as to the validity of the loyalty affidavit hereinafter mentioned.

Appellee Union & League of Romanian Societies of America, Inc., is a fraternal benefit association, chartered under the laws of Ohio, as also is its subordinate society, United Romanian Society Carpatina.

At the Union convention held at Youngstown, Ohio, in September, 1948, a resolution authorizing the use of a loyalty affidavit was unanimously approved and adopted —which, translated, is substantially as follows:

> "The officers of the Union and League and officers of the societies which compose the Union & League shall be obligated to sign a declaration through which they state that they are not Communists; that they do not belong to any subversive organization which works against the Constitution and Laws of the United States of America."

It was then by unanimous vote resolved that the Union & League should print the forms of the declaration.

Article VII of the 1939 bylaws of the Union & League R. S. A., Inc., provided:

> "Section 3. The regular convention shall be the legislative and governing body of the U. & L. R. S. A., Inc., and is vested with full power and authority to make, alter, repeal or amend the Constitution, Bylaws and all laws, rules and regulations for the government, management, discipline and control of the Organization, or of any member society. When in

session it shall possess jurisdiction over all member societies and shall have power to enforce the laws, rules and regulations enacted by the said convention or any regulation or order made by the Executive Committee; it shall decide upon and punish by penalty, fine, passivity or expulsion, those found guilty of violating the constitution, bylaws or insurance laws; and it shall have the power to do and perform any and all other acts and things by it deemed essential to the welfare and perpetuity of the Organization. When the convention is not in session said supreme authority shall be vested in and exercised by the Executive Committee except where otherwise provided in this Constitution and bylaws."

Article VI provided:

"Section 1. The Executive Committee shall consist of the President, First Vice-president, Second Vice-president, Secretary, two Auditors and seven Trustees, elected by the regular convention. The Executive Committee is the forum which supervises the affairs and the regular proceedings of the organization from one term to another of the regular conventions."

"Section 3. The Executive Committee shall have the following duties: * * *.

"(d) Receive and consider all the appeals and claims of the members and of the member societies and resolve them in conformity with the provisions specified in the constitution and bylaws."

Article IV provided:

"Section 6. The active members of the member societies who fulfill all the requirements of the constitution and bylaws, shall have the right to be elected to any office of the member society or to the central organization, excepting where the constitution and bylaws otherwise provide.

"The following are not eligible to be elected to office:

"(a) Those sentenced to prison for major crimes.

"(b) Those who are found guilty of moral turpitude, and who have caused the member societies or the central organization any moral and material losses.

"(c) Those under indictment or accusation by any forum of the Member Societies or of the Central Organization."

We are not here concerned with the form of the loyalty affidavit prior to the modification of 1951, nor are the first three sections of the 1951 affidavit, prepared and promulgated by the executive committee, under attack; it is the last three paragraphs of the 1951 affidavit which give rise to controversy under consideration. Those sections follow:

"4. I have not been sentenced to prison for a crime nor have I been found guilty of moral turpitude, nor have I caused the member societies or the central organization any moral and material loss.

"5. I have not ever been found guilty of mishandling or misappropriating public funds of any social, fraternal or religious organization.

"6. I am not now a suspended or passive (inactive) member of the Union and League of Romanian Societies of America."

The officers of the Society Carpatina did not sign the new affidavit, but instead executed the old form of affidavit, and sent it to the Union & League R. S. A. The Union, in turn, by letter, advised Carpatina that it could not approve the local officers of Carpatina, and requested Carpatina to send one or two delegates to a meeting of the executive committee of the Union to be held on March 8, 1952.

As a result of that executive committee meeting, the executive committee refused to approve the officers of Carpatina who had been elected in December, 1951, and suspended Carpatina until the national convention to be held at Lorain, Ohio, in September, 1952.

At the national convention in Lorain, the convention set up a grievance committee, to which was submitted charges, drawn up by the national president of the Union against the twenty-five officers of Society Carpatina, involving their failure and refusal to sign the amended loyalty affidavit.

In the absence of the officers of Carpatina, who, because of their Society's suspension, were permitted no voice in the convention, the grievance committee recommended suspension or expulsion of all of them. The national convention approved the recommendation of the grievance committee, and placed "in passivity" twenty-four officers of Carpatina, and expelled one.

That is the order which gives rise to both of these actions.

We hold, under the provisions of the constitution and bylaws of the Union above set forth, as follows:

1. That the executive committee had ample authority to prepare, promulgate, and require to be signed, the loyalty affidavit of 1951.

2. That the failure of the officers of Carpatina to sign and forward the affidavit in question, as required, justified the suspension imposed on Carpatina by the executive committee.

3. That the action of the convention in creating, and submitting to a grievance committee, the charges preferred against the officers of Carpatina, was entirely within the constitutional authority of the convention.

4. That because of the suspension of Carpatina, its officers were not permitted to participate in the convention at Lorain, which was as provided in the constitution and bylaws of the Union.

5. That the action of the convention in placing twenty-four of said officers "in passivity" and expelling one, was within the constitutional authority of the convention, and the punishment within the limits fixed by the constitution.

As the result of the foregoing conclusions, we hold that plaintiff Union & League, etc., is entitled to the relief which it seeks; that United Society Carpatina and its officers are not entitled to the relief which they seek, and that their petition should be dismissed.

A decree may be prepared carrying into effect the foregoing orders. Appellants shall pay the costs of these proceedings.

DOYLE, P.J., and HUNSICKER, J., concur.

(Judges of the Ninth District sitting by designation in the Eighth District.)

APPENDIX E.

Affidavit Used by Union & League for 1948, 1949 and 1950 (R. 57).

AFFIDAVIT

FOR USE IN CONFORMITY WITH RESOLUTION PASSED AT THE 32nd NATIONAL CONVENTION OF THE "UNION & LEAGUE OF ROMANIAN SOCIETIES OF AMERICA, INC.," AT YOUNGSTOWN, O., ON SEPT. 5-9, 1948.

(Must be filed in duplicate within seven days after election or appointment to office.)

STATE OF _____ }
COUNTY OF _____ } ss.

We the undersigned duly elected officers of the _____ _____Branch No. _____ of The Union & League of Romanian Societies of America, Inc., with branch office located at _____ _____.

Being first duly sworn according to law, depose and say that:

1. I am not a member of the Communist Party or affiliated with such party.

2. I am not a member of the International Workers Order (I. W. O.) nor affiliated with any organization which has been or is subversive or identified as Communist, Nazist, or Fascist or in any way un-American or contrary to the American principles and ideals of free government.

3. I do not believe in and I am not a member of, nor do I support or intend to be a member of any organization that believes in or teaches the overthrow of the United

States Government by force or by any illegal or unconstitutional methods.

* * * * *

Subscribed and sworn to before me this _____ day of _____, 19____.

_____

(Notary Public)

My commission expires _____.

(SEAL)

WARNING: The attention of the person filing this Affidavit with the Union & League of Romanian Societies of America and the respective local Society, is directed to the Federal and State Criminal Code, which provide that any person willfully making or causing to be made any false or fraudulent statements or representations, shall be punishable as provided by such Federal and State laws.

Approved this _____ day of _____, 19__, at Cleveland, O.

THE UNION & LEAGUE OF ROMANIAN SOCIETIES OF AMERICA, INC.,

_____

President.

_____

Secretary.

(SEAL)

APPENDIX F.

Revised Affidavit of 1951 (R. 46, 51).

(Heading omitted—same as that of Appendix E.)

I the undersigned duly elected delegate to represent the _____ Branch No. _____ with branch office located at _____

_____

at the 34th National Convention of the Union & League of Romanian Societies of America, Inc., at Lorain, Ohio, beginning Sunday, August 31, 1952.

Being first duly sworn according to law, depose and say that:

1. I am not nor have I been a member of the Communist Party or affiliated with such party.

2. I am not nor have I been an active member or officer nor have I actively supported the International Workers Order (I. W. O.) nor have I been affiliated with any organization which has been or is subversive or identified as Communist, Nazist or Fascist or in any un-American or contrary to the American principles and ideals of free government.

3. I do not believe in and I am not a member of, nor do I support or intend to be a member of any organization that believes in or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods.

4. I have not been sentenced to prison for a crime nor have I been found guilty of moral turpitude nor have I caused the member societies or the central organization any moral and material loss.

5. I have not ever been found guilty of mishandling or misappropriating public funds of any social, fraternal or religious organization.

6. I am not now a suspended or passive (inactive) member of the Union and League of Romanian Societies of America.

NAME ADDRESS CITY AND STATE

AGE CITIZENSHIP CITIZENSHIP DATE

Subscribed and sworn before me this ____ day of _____, 19_____.

_____

(Notary Public)

My commission expires _____

(SEAL)

Certified this _____ Day of _____, 1952, at _____ Society _____, Branch No. _____.

_____

Local Branch President

_____

Local Branch Secretary

WARNING: The attention of the person filing this Affidavit with the Union & League of Romanian Societies of America and the respective local Society, is directed to the Federal and State Criminal Code, which provide that any person willfully making or causing to be made any false or fraudulent statements or representations, shall be punishable as provided by such Federal and State laws.

Approved this _____ day of _____, 19__, at Cleveland, O.

THE UNION & LEAGUE OF ROMANIAN SOCIETIES OF AMERICA, INC.

_____

National President

_____

National Secretary

(U. & L. OF R. S. A. SEAL)

Mail this affidavit in duplicate within seven days after election, to Central Offices for certification.